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Current Topics.

Coal Mines Output.

FIGURES contained in the report recently issued by the Mines Department on the working of schemes under Pt. I of the Coal Mines Act, 1930, show a total output allocation for the quarter ended 31st March, 1935, of 61,793,956 tons—an increase of 827,408 tons on the amount originally allocated. The report shows in operation the new procedure under which it is necessary for the Central Council to determine for all districts inland and export supply allocations, as well as output allocations for the quarter. The basis adopted in fixing the allocations was the actual performance of the different districts during the corresponding quarter of the previous year. The decision of the council was accepted by all districts without recourse to arbitration, though the principle in accordance with which the various district allocations were determined came in for some criticism at the hands of some of the executive boards. The report states that the policy of the council in fixing the initial export supply allocations, totalling 12,611,899 tons, at amounts corresponding to the actual export disposals in the March quarter of 1934, would appear to have been justified by the results. Only six applications for increases were made by districts during the quarter. The total output for the quarter showed a decline, in round figures, of 1,500,000 tons when compared with that of the March quarter, 1934, and of this nearly 1,000,000 tons was attributable to the decreased output of the Midland (Amalgamated) District. This total output, which was 59,425,245 tons, fell short of the final allocation by over 2,250,000 tons. No district exceeded its allocation. The Gresford Colliery disaster is reflected in the North Wales deficiency of over 140,000 tons, the greater part of which is attributed to the idleness of that colliery.

Rural Housing.

REFERENCE was made in our last issue to the disappointing response made by local authorities as a whole to the Housing (Rural Workers) Acts of 1926 and 1931 and to the amendments in regard to this aspect of the housing problem which have been introduced by the Housing Act, 1935, and duly commended to the attention of the authorities (whether authorities under the Housing (Rural Workers) Acts or not) by the recent communication of the Minister of Health. It is thought that a short explanation of the contents of the enclosure to the Ministry of Health Circular 1493 dealing with the modifications introduced by the Act of 1935 in regard to rural housing will be of interest to readers. The operation of the Housing (Rural Workers) Acts which would have expired on 1st October, 1936, has been extended to 24th July, 1938, by s. 37 of the Housing Act, 1935, and in approved schemes where mention is made of the former date, the latter will be automatically substituted. In future, the rate of interest on loans granted under these Acts will be $\frac{1}{4}$ per cent. in excess of the Public Works Loan Board's rate for housing loans to local authorities. Another minor alteration is the substitution of 4 per cent. for 3 per cent. as the maximum increase of rent which may be charged for a reconditioned cottage. Reference is made to s. 20 of the new Act, which authorises a local authority to purchase compulsorily houses or other buildings capable of being made suitable for working class dwellings, and directs the authority to carry out the required alterations or lease or sell the property subject to conditions securing that object. This, it is stated, has an added importance where the Housing (Rural Workers) Acts operate to provide financial assistance for the necessary works. Attention is also drawn to the provisions of s. 38 of the Housing Act, 1935, which enable a local authority to obtain the same grant in respect of works carried out on its own property as a private owner carrying out such works might have obtained. It is explained that a local authority, which is not a local authority under the Housing (Rural Workers) Acts and carries out such works on its own property, is to proceed exactly as if it were a private owner. Authorities under those Acts apply to the Minister, furnishing the necessary plans, etc. On the general position, mention is made of "some increase in the resort to the powers of those Acts" which has recently been secured. But it is suggested that it can hardly be the case that "conditions vary so much from one county to another as to justify, side by side with the wide use of them which obtains in particular areas, the almost negligible work done in other cases which are apparently similar." The benefit of expenditure under the Acts, it is stated, goes practically without qualification to the occupiers of the cottages which are reconditioned with the aid of that expenditure. The Minister of Health suggests that it may well be found that the new provisions obviate the difficulties which in certain areas have been thought to impede a fuller use of the Housing (Rural Workers) Acts.

Ribbon Development : Minister's Circular.

A CIRCULAR has recently been sent by the Ministry of Transport to the county, borough and urban district councils in England and Wales and to the county and town councils in Scotland dealing with the Restriction of Ribbon Development Act, 1935. This was accompanied by an explanatory memorandum on the same Act, which may be obtained at the Stationery Office (price 1d.). The various provisions of the new statute have already been sufficiently dealt with in this column, and it is not proposed to go over the same ground again, but the circular brings out certain points of practical importance, and these it is proposed shortly to indicate.

Thus, the circular alludes to the view expressed in many quarters during the passage of the Bill through Parliament that the imposition of control upon classified roads alone would tend at once to the transfer of ribbon development to the unclassified roads. It is suggested that local authorities will already have examined the probability of any such tendency on the unclassified roads in their respective areas with a view to selecting those over which it is desirable to assume immediate powers of control. The Minister of Transport urges that a careful survey for this purpose should be completed with the least possible delay, and indicates that he is prepared at once to bring restrictions into force in respect of any roads that were not classified roads on 17th May, 1935 (the determining date in the Act), upon which there appears to be any danger of this kind of development. It is pointed out that a single resolution may deal with any number of roads (provided the individual roads are specified), and that the term "road" includes a proposed road, the plans for which have been approved by the Minister. Under the powers conferred by s. 19, sub-s. (2), of the Act, the Minister is, it is stated, prepared to consider applications for grants out of the Road Fund towards the expenditure incurred by a highway authority in payment of compensation for injurious affection arising out of restrictions resulting from the adoption of a standard width for roads in accordance with the provisions of s. 1. A further communication is to be sent to highway authorities at an early date indicating road lay-outs considered by the Minister to be appropriate to the various standard widths, "but meanwhile," it is said, "the Council will doubtless take the opportunity of surveying the roads to which they consider the protection of the Act should be extended and of determining, on a long view, what are likely to be the future traffic requirements in order that the lines of widening may be safeguarded."

Road Safety.

THE circular provides a number of instances of the ways in which local authorities can, by taking advantage and utilising to the full the various provisions of the Act, promote road safety. One of these is the proper control of the means o access in which, the circular intimates, authorities will recognise lies an effective safeguard against ribbon development and a means of preventing the danger and inconvenience on the road that arises from the presence of stationary vehicles. In regard to what constitutes access, attention is drawn to s. 24, sub-s. (2), of the Act, which provides that the mere taking away of a gate or fence does not of itself constitute the formation of a means of access. The construction of a road or path—including a path for foot passengers only—is stated to be clearly the formation of a means of access, while, in cases where it is not possible to point to the definite construction of a road or path, but there is habitual user of a track, the question whether or not such user constitutes the formation of a means of access must be a matter of fact which can only be authoritatively determined in the particular case by the courts. The provision of adequate parking accommodation at reasonable charges is also exhibited as "a potent means of reducing the inconvenience to traffic and the danger to life and limb caused by the presence of waiting vehicles in the streets," and the Minister trusts that in all appropriate cases, where private enterprise does not meet public needs, this important matter will receive the very early consideration of local authorities—in consultation with the highway authorities where different authorities are concerned. With regard to the provisions of s. 17, which enable a local authority to require those responsible for the erection of certain classes of new buildings to provide adequate accommodation for loading and unloading of vehicles, or picking up and setting down of passengers for the purpose of limiting interference with traffic as a condition of approval of building plans, the Minister, it is stated, does not doubt that in accordance with the Act the local authorities will consult freely with the police and, where different authorities are concerned, with the highway authorities as to the exercise of their new powers, which if effectively exercised "should limit further encroachment upon the freedom of movement of persons having business in urban areas." The importance of the circular as a factor in the campaign against ribbon development will be clear from the foregoing short indication of its contents. The Restriction of Ribbon Development Act necessarily leaves much in the hands of local authorities, and it is only by their vigorous co-operation and their full use of the new powers with which they have been invested that the full benefit of the Act will be secured.

Invalid Road Signs.

THE importance to the authority concerned of seeing that traffic signs conform to the regulations is further illustrated by a recent case heard at the South Shields Police Court, where a motorist successfully raised the point that a "Keep Left" sign, which, it was alleged, he had ignored, did not comply with the Ministry of Health requirements. The sign in question measured $11\frac{7}{8}$ in. by $14\frac{7}{8}$ in., and it was urged that in order to comply with the regulations it should measure either 12 in. by 9 in. or 24 in. by 18 in. It was explained that the local authority had considered the first of these sizes too small and the second too large and cumbersome, but that the consent of the Ministry had not been obtained to the particular sign in question or to its erection. Steps would be taken immediately to regularise the position. The case recalls that recently referred to in this column in which a motorist successfully set up as a defence the absence of the word "Stop" on the red lens of a traffic light.

Regularisation of Doubtful Marriages.

THE Marriages (Provisional Order) Bill, which was recently ordered by the House of Lords Committee on Unopposed Bills to be reported for third reading—the measure had already passed the House of Commons, has for its object the regularising of marriages rendered doubtful in law because certain churches had not been licensed, and in one case the old church had been used after a new church had been consecrated. It was understood from a memorandum that the vicar of another church, Holy Trinity, Okeham, did not intend to have the building licensed for marriages. LORD ONSLOW said that that seemed rather inconvenient. The vicar might leave, and the same mistake might be made again because people might think that the Bill automatically put matters straight. If the church was not licensed, publicity ought to be given to the fact. It seems that a letter has been sent to the diocesan registrar on the subject.

Public Right of Way Extinguishment.

THE attention of readers may be drawn to the Housing Acts (Extinguishment of Public Right of Way) Regulations, 1935, which come into force immediately and revoke the previous regulations of 1932, but without prejudice to anything done thereunder or to the continuance under the same of any action taken or commenced before the commencement of the Housing Act, 1935. The new provisional regulations prescribe in a schedule a form to which orders by local authorities under s. 13 of the Housing Act, 1930, must substantially conform, and provide for suitable advertisement and posting at each end of the way of notices of the order before the latter is submitted to the Minister of Health for approval. The regulations have in view the extinguishment of rights of way over land which a local authority has purchased or resolved to purchase either under Pt. I of the Housing Act, 1930, or under s. 15 of the Housing Act, 1935, and over land belonging to a local authority, and included in a clearance area or comprised in a redevelopment plan or, again, land which (had it not been previously acquired by the authority) might have been purchased by it as being land surrounded by, or adjoining, a clearance area.

Irish Representative Peers.

LORD BELLEW, of Barmeath Castle, County Louth, who recently died in London, was chosen as an Irish Representative Peer in the year 1914. The occurrence of such a vacancy will no doubt lead the curious to ponder over the intricacies of the representative peerage in the United Kingdom Parliament.

The system has its origin in the arrangement which was made when, in the year 1707, the Kingdoms of England and Scotland were united by the name of Great Britain. Before that time the Scots Nobles sat with the "Barons" and burgesses in a single chamber at the Parliament House, Edinburgh. The Acts of Union made provision for the election of sixteen of the hereditary peers of Scotland to be elected by the whole number of those peers as Lords of Parliament to sit in the House of Lords at Westminster for the duration of each Parliament. The elections are held at a meeting in Holyrood Palace, presided over by the Lord Clerk Register, and convened by Royal Proclamation. The Lord Clerk Register sends a certificate of the names of the elected peers to the Clerk of the Crown in Chancery, who delivers it at the table of the House of Lords. In passing, it is hard to refrain from quoting once again the lament of Andrew Fairservice (in "Rob Roy") over the extinction of Scotland's uni-cameral Legislature. "After the Commons' Parliament had tuggit and rived and rugged . . . the Lords' Parliament they behoved to hae their spell o't. In puir auld Scotland's Parliament they a' sate thegither, cheek by chowl, and then they didna need to hae the same blethers twice ower again."

As regards Ireland, the system of representative peers was established by the Acts of Union in the year 1800. Four lords spiritual of Ireland, by rotation of sessions, were allowed to sit and vote in the House of Lords of the United Kingdom Parliament. Twenty-eight Irish hereditary peers were to be elected by the whole of that body to represent them in the House of Lords: a peer so elected was entitled to receive a writ of summons and to sit for life. The Irish Church Act, 1869, eliminated the Irish spiritual peers by enacting that after 1st January, 1871, no archbishop or bishop of the Church of Ireland (disestablished by that Act) should be summoned to or qualified to sit in the House of Lords as such. The system was not further disturbed until Irish constitutional changes were made in the years 1920–1922.

The procedure for filling a vacancy among the Irish representative peers assumes the existence of two important functionaries, the Lord Chancellor of Ireland and the Clerk of the Crown and Hanaper, the Chancellor's principal officer. When the vacancy occurs, the Lord Chancellor (of England) directs a writ under the Great Seal to be issued to the Irish Lord Chancellor, directing the latter to cause writs to be issued to all peers of Ireland to vote for the election of a representative peer. The writ, with a form of return having a blank for the insertion of a name, is to be sent by the Clerk of the Crown and Hanaper to every Irish peer who has proved his right to vote. The writs are to be returned to the Crown Office in Ireland, and the writs and returns, with certificates of the Clerk of the Crown and Hanaper, were according to the former practice delivered on oath by that clerk at the Bar of the House of Lords. Under the Government of Ireland Act of 1920, as originally enacted, both north and south would have had their separate local Parliaments within the United Kingdom, and would have had representation in the Commons' House at Westminster. Nor was there anything in this enactment which would have disturbed the system of Irish representation in the House of Lords. The Irish Lord Chancellor was to become merely a judge, and the custody of the Great Seal of Ireland and the Chancellor's executive functions were to be transferred to the Lord Lieutenant, who was to be the King's delegate for the whole of Ireland. Under such an arrangement, the execution of writs for the election of representative peers could have been effected, *mutatis mutandis*, as formerly.

But the course of events has been different. "Southern Ireland" within the meaning of the 1920 Act did not come into being, and the area of which it was to consist became a dominion—the Irish Free State. A dominion is not part of the United Kingdom, and has no representation in its House of Commons. The representation of all-Ireland in the House of Lords became not only an anomaly but also impossible to effectuate in a part of Ireland outside the purview of United Kingdom writs and functionaries. Theoretically, it might be suggested that, as Northern Ireland remained within the Kingdom, the Irish representative peerage should be continued, with a reduction in number, to represent Northern Ireland. In practice, however, the difficulties seem almost insuperable. To start with, the Irish peerage would have to be reduced to some sort of Northern Irish Peerage—an ungrateful if not impossible task. But it is not necessary to pursue that matter here. The situation has been faced for a good many years by a policy of masterly inactivity. As Irish representative peers die, their successors usually establish, to the satisfaction of the Lord Chancellor, their right to vote "at any elections of representative peers for Ireland which may be held in future under the statutes in force relating thereto." The Lord Chancellor makes a report to this effect to the House of Lords, and the House orders it to be sent to the Clerk of the Crown in Ireland. This procedure is still observed, but it has not resulted in an election since December, 1919. There is no Lord Chancellor of Ireland; the office of Clerk of the Crown is not known to the constitution of the Irish Free State; and the number of representative peers has dwindled from twenty-eight to fifteen or sixteen.

From time to time curiosity impels members of Parliament to try to "draw" the Government of the day. For instance, on 9th April, 1925, a bout with the Parliamentary foils took place as follows:—

"Mr. MacKenzie Livingstone asked the Prime Minister what steps it is proposed to take to fill up the vacancy at present existing in the ranks of the Irish representative peers?

"The Prime Minister (Mr. Baldwin): This matter is receiving the consideration of the Government, who are taking advice upon it.

"Mr. Livingstone: To whom will the writ of summons be sent?

"The Prime Minister: When we have had advice, I hope I may be able to tell the hon. Gentleman.

"Lieut.-Commander Kenworthy: How is it that this breach of the Constitution has been made, and allowed to continue for so long?

"The Prime Minister: It is to avoid making a breach that I am taking advice.

"Captain Benn: Is it not the fact that the difficulty of the Prime Minister arises from the fact that he has to send the writ to the Lord Chancellor of Ireland, who does not exist?

"The Prime Minister: I beg my hon. and gallant Friend not to imagine that I am in any difficulty."

Later in the same year Mr. Baldwin stated that he was advised that under present conditions no election of Irish representative peers could take place, but that the matter would be taken into consideration by the Government in connection with any proposals which they might put forward for the revision of the constitution of the Upper House. At one time a member complained of the anomaly of Irish peers dealing with the affairs of Great Britain, and contrasted their number of twenty-eight with the sixteen allotted to Scotland. At another time it was rumoured that a movement was on foot among the members of the Irish peerage, other than those now entitled to sit as representative peers, to present a petition

to His Majesty, praying that steps may be taken to effectuate the rights conferred upon them by the Act of Union.

The matter of representative peers must necessarily be taken into account by the framers of proposals for the reform of the House of Lords. No Government has so far received the unanimous support of its party for any such proposals. But the reform resolutions which have been debated in the House of Lords certainly contemplated the application of the principle of representative peers to the reformed Second Chamber. The same principle was to be found in the Parliament (Reform) Bill, which the Marquess of Salisbury introduced in the year 1933. The Bill proposed that the hereditary peers should elect 150 of themselves to sit as Lords of Parliament along with other lords chosen in a different way. The Scottish and Irish representative peers were included as electing peers, but the Bill did not provide a solution of the problem involved in producing Irish representative peers to form part of the electorate. An earlier Bill—introduced by Colonel Claude Lowther in the Commons in the year 1922—would have made short work of both Scots and Irish representative peers, by providing that the enactments relating to their representation in the House of Lords should cease to have effect. As regards Ireland, the relevant enactments at present achieve only the limited effect of keeping the existing representative peers as members of the Upper Chamber.

Schemes under the Agricultural Marketing Act.

One of the main objects of the Agricultural Marketing Act of 1931 (for convenience referred to as "the Act") is to enable schemes to be made for the regulation of the marketing of agricultural products, but the powers conferred in that behalf are permissive only, and not compulsory. Every marketing scheme must emanate from the producers themselves, and the duration of its existence will generally depend on their continued faith in its efficacy. It is not, however, left to producers to put into operation marketing schemes at their good pleasure; for each scheme requires the approval of "the Minister" and the sanction of both Houses of Parliament before it can come into operation.

The term "the Minister," as defined by the Act, is capable of three possible meanings. Schemes may be made to apply to the whole of Great Britain or may be limited to a part of it. In English cases the Minister is to be the Minister of Agriculture and Fisheries; in Scottish cases the Secretary of State for Scotland; and, in what may be termed Great Britain cases, the Minister and Secretary acting in conjunction.

The term "agricultural product" as used in the Act has a somewhat wide significance, for it includes "any product of agriculture or horticulture and any article of food or drink wholly or partly manufactured or derived therefrom, and fleeces and skins of animals." It will be as well to note at this stage that the term "regulated product," when used in relation to a scheme, means any agricultural product which is regulated thereby.

Inauguration of Schemes.

The combined effect of s. 1 (1) and Pt. I of Sched. I of the Act is to enable schemes for the regulation of the marketing of agricultural products to be submitted to the Minister by persons substantially representing the producers of that product in the area in which the scheme is intended to operate. The first step to be taken by the Minister after a scheme has been submitted to him is to publish notice of it in the "Gazette," and in any other manner he thinks expedient. The term "the Gazette" means, in English cases the "London Gazette"; in Scottish cases the "Edinburgh Gazette"; and in Great Britain cases both these periodicals. In addition to stating the fact of submission, this notice must state where the scheme may be inspected, where copies may be obtained on payment of the fee prescribed, and the time (not less than six weeks from the publication of the notice in the "Gazette") within which objections and representations may be made. These objections must be made to the Minister in writing, and must state the grounds of objection and the specific modification of the scheme required. By s. 1 (5), the Minister may make modifications in a scheme, but he cannot, in this way, alter the area to which it applies, nor can he, apparently, make good what was originally a bad scheme (vide *R.* v. *Minister of Agriculture and Fisheries*; *ex parte Berry*, 101 L.J.K.B. 561). If a modification is required by an interested party, the Minister must, unless he considers it frivolous, direct a public enquiry to look into the matter before he can refuse to make it. (As to public enquiries, see s. 1 (6), (7) and S.R. & O. 1932, Nos. 397 and 600.) Before finally amending a scheme, the Minister is to give notice of all proposed modifications to a body of persons nominated by the submitters for the purpose of considering them; and, unless such modifications are approved by a majority of this body, within the time allowed, the Minister is to take no further action regarding the scheme.

If the Minister is satisfied that the scheme is one which will conduce to the more efficient production and marketing of the regulated product, he may, after consultation with the Board of Trade, lay a draft before Parliament, and, if it is approved by both Houses, he must make an order sanctioning the scheme, which shall, subject to the provisions of the Act, come into operation on the date specified in the Order. As we shall see presently, certain further steps have to be taken before the scheme comes into full effect.

We must note at this point, that every scheme is to provide for the setting up of a Board, whose functions shall be the administration of its provisions (for details as to the constitution of boards, see Sched. II of the Act, and s. 14 of the A.M.A., 1933).

As soon as practicable after the coming into operation of the Minister's order, the Board must take steps to obtain the registration of the producers of the regulated product, and to this end must insert in such newspapers as the Minister may direct a form of application for registration under the scheme and a notice containing certain particulars specified in s. 4 (1) of the Act. The Board must also post to all persons not registered or exempt from registration, who they believe to be producers of the regulated product, copies of the form of application and notice above referred to. Failure to register may have serious consequences, as, if the scheme comes into complete operation, only producers who are registered thereunder or exempt from registration will be allowed to sell the regulated product.

The next step is for the Board to take a poll of the registered producers on the question whether the scheme shall remain in force (for provisions as to the taking of polls, see s. 3 of the Act). If the scheme is sanctioned by the prescribed majority it will come into complete operation at the expiration of the "suspensory period," i.e., from one to two months from the declaration of the poll, as is provided by the scheme. If, however, the scheme is not so sanctioned it will cease to have effect from the declaration of the poll, and if, during the suspensory period, it is proved to the Minister that less than half the registered producers voted, he must make an order revoking it.

Contents of Schemes.

The matters dealt with in Agricultural Marketing Schemes fall into two classes, namely, those which must, and those which may, be included.

The compulsory provisions of schemes are, in the main, administrative, and they provide the machinery by which the actual regulating of agricultural marketing is enforced.

The more important of them, from the ordinary practitioner's point of view, are as follows :—

1. A provision for the registration of producers of the regulated product, other than those exempted by the scheme.
2. The classes of persons, and sales, exempted from the provisions of the scheme.
3. Provision for reference to arbitration by producers aggrieved by any act or omission of the Board.
4. Penalties for contravention of provisions of the scheme made under s. 5 of the Act.
5. A prohibition of sales of the regulated product by persons neither registered nor exempt from registration.
6. The payment of contributions to the Board by registered producers.
7. Payment by the Board of compensation to registered producers in cases specified in the scheme.

Except in the case of a substitutional scheme, i.e., one which revoked one or more existing schemes, Nos. 4–7 above, will not become operative until after the expiration of the suspensory period.

The most important of the optional provisions are contained in s. 5 of the Act, as extended by ss. 10 and 12 of the A.M.A., 1933, and s. 6 of the A.M. (No. 2) Act, 1933. Under these sections a scheme may, subject to the Minister's approval, provide for all or any of the following matters :—

1. The quantity and description of the regulated product which may be sold by any registered producer, the persons to whom, or through whose agency, it may be sold, and the terms and conditions of sale.
2. Power may be given to the Board—
   (*a*) to buy, sell, or act as agents for, the sale of the regulated product ;
   (*b*) to produce and sell commodities therefrom ;
   (*c*) to buy, and to sell or let for hire to registered producers, anything required for the production, adaptation for sale, or sale of the regulated product ;
   (*d*) to require sales by registered producers to be made to or through the agency of the Board (vide *R.* v. *Minister of Agriculture and Fisheries, ex parte Berry*) ;
   (*e*) To co-operate with any other person in the doing of anything allowed under (*a*), (*b*) and (*c*) above ;
   (*f*) To encourage agricultural co-operation, research and education.
3. Regulations as to grading, marketing, etc.
4. Provisions as to inspection of premises believed to be used by registered producers, in connection with the regulated product.
5. The furnishing of information to the Board by registered producers.
6. Provisions as to pooling of proceeds of sale.

Under s. 7 (2), power may be given to the Board to lend money to registered producers, and to guarantee loans made to them under agricultural charges.

(The optional provisions of schemes set out above will not, except in the case of a substitutional scheme, come into effect until after the expiration of the suspensory period.)

It is further provided by s. 2 of the A.M. (No. 2) A., 1933, that a scheme may empower the Board to lend or grant money to any other Board; or to guarantee repayment of any loan made to such Board.

By s. 6 (1) (*a*), added by A.M.A., 1933 (Sched. III), a scheme may provide that where by reason of a registered producer dying, or becoming subject to some legal disability, or entering into a composition or scheme of arrangement with his creditors, any property in, or control of, the regulated product is transferred from the registered producer to any other person, such other person shall, in such circumstances and in respect of such matters as may be specified in the scheme, be deemed to be a producer.

The last of the optional provisions of schemes which remain to be noted are contained in s. 6 (2). By this sub-section, matters may be included which are incidental to or consequential on the provisions of the Act relating to the contents of schemes.

Amendment and Revocation of Schemes.

The relevant provisions of the Act as to the amendment and revocation of schemes are contained in Pt. II of Sched. I.

The first step to be taken when an amendment of a scheme is deemed desirable is for the Board to publish notice of it in the manner prescribed by the scheme, and then, if it is properly demanded, to take a poll of the registered producers. If a poll is demanded, and the requisite majority of the registered producers voting thereon are in favour of the submission of the amendment to the Minister, the Board may submit it for his approval. From this point the procedure is very similar to that for the approval of schemes, the main differences being that modifications are to be submitted to the Board, and no draft order is to be laid before Parliament unless there is a public enquiry with regard to an objection which has not been withdrawn.

It should be noted that a substitutional scheme is, for the purpose of submission to the Minister, treated as an amendment, and the provisions of the schedule regarding publication to the registered producers, and the taking of a poll, if demanded, apply accordingly. After submission, the main differences between what may be called an original scheme and a substitutional scheme, are that the latter will not require ratification by a poll after the Minister's order approving it has come into effect ; and none of its provisions will be postponed until after the expiration of the suspensory period.

The revocation of a scheme is effected by order of the Minister. Such an order must be made if, as the result of a poll, the registered producers declare against the scheme, or if an order has been made for the winding-up of the Board ; and if the Minister considers the provisions of the scheme, or any act or omission of the Board, to be contrary to the interests of consumers of the regulated product, or of a substantial number of persons affected by the scheme, and not in the public interest, he is authorised to lay before Parliament the draft of an order revoking the scheme. If both Houses approve by resolution, the order shall be made accordingly.

Even after the coming into operation of an order of revocation such of the provisions of the scheme as relate to the winding-up of the Board will remain in force, unless the scheme was revoked by a subsequent scheme which provided for the dissolution of the Board without winding-up.

Company Law and Practice.

Permanent Directors and their Powers.

Two interesting and important points of company law came up for consideration in the recent case of *John Shaw & Sons (Salford) Limited* v. *Shaw* [1935] 2 K.B. 113 : first, the effect of the failure to summon ordinary directors to a meeting of permanent directors where the latter had vested in them exclusively the power to deal with the particular question ; and secondly, the power of the company in general meeting to control the exercise by the directors of the powers vested in them by the articles of association. As we shall see, the Court of Appeal was, on another ground, unanimous in its decision, but there was some divergence of opinion on the first of the two points I have mentioned and no complete decision on the second.

The facts in the case are a little involved. There were two defendants, each of whom was a director of and indebted to the plaintiff company ; they had agreed to terms of settlement by which the first defendant should resign his office as governing director, the company should appoint independent persons as permanent directors and the two defendants with

three others should be ordinary directors. Further, the company's articles were to be altered so as to provide that the defendants should have no control over and no right to vote in respect of their debts; an accountant was to certify the amount of the defendants' liability, and any dividends payable to the defendants were to be retained by the company on account of the debts, which, however, were not to be called in for twenty years. Finally, these terms were to be embodied in an agreement under seal and sanctioned by special resolutions of the company. Special resolutions embodying the agreement were passed and the articles of association duly altered, and the new articles further provided that all the ordinary directors should have no right at directors' meetings to vote in respect of the company's financial affairs, and that with regard to other business they were to have only such rights of voting and control over the management as might be conferred by the permanent directors.

An accountant prepared a balance sheet which showed the amount due to the company by the defendants, and that balance sheet, which was signed by the defendants as directors, was adopted at a general meeting of the company at which the defendants were present.

The agreement under seal containing the terms of settlement was sealed by the company, but the defendants declined to execute it, as they objected to certain of its terms. Accordingly the permanent directors, at a meeting to which the ordinary directors were not summoned, resolved that instructions be given for writs to be issued against the defendants for the recovery of the debts owing by them. At an extraordinary meeting of the company a resolution was passed by the shareholders directing the chairman of directors to discontinue proceedings; nevertheless, a writ was issued against each defendant claiming the amount as "found and admitted by the defendant to be due to the plaintiffs as shown by the plaintiffs' balance-sheet."

The Court of Appeal unanimously decided in favour of the defendants on the ground that the balance sheet was not an account stated between the company as creditors and accepted by the defendants so as to involve a fresh promise to pay the amounts stated at debit of the defendants: it was not signed by the defendants in their personal capacity but on behalf of all the directors as a statement by the directors to the shareholders of the state of the company's assets and liabilities.

The second main ground put forward on behalf of the defendants was that the actions had been brought without proper authority, and this contention was based on (*inter alia*) the fact that the ordinary directors had not been summoned to the meeting at which the permanent directors had resolved to commence proceedings, and secondly, that the company in general meeting had directed the discontinuance of the proceedings.

Now there is established authority for the proposition that the failure to summon directors to a board meeting renders such a meeting and its proceedings invalid: see *In re Horner District Consolidated Gold Mines*, 39 Ch. D. 546; *In re Portuguese Consolidated Copper Mines Limited*, 42 Ch. D. 160; *Young* v. *Ladies' Imperial Club* [1920] 2 K.B. 523. In the case we are considering Greer, L.J., said that "these decisions mean that a meeting of directors having power to make a decision on a given matter is invalid if one of the directors entitled to take part has not been summoned." They did not apply here because on the construction of the articles of association the ordinary directors had no power to make a decision on the matter under consideration at the meeting to which they were not summoned: for the effect of the articles was that the power of control over the financial affairs of the company and all powers of management of the affairs of the company except such as might from time to time be conferred upon the ordinary directors by the permanent directors, were vested in the permanent directors alone. The power to instruct the company's solicitors to commence proceedings on behalf of the company was in the permanent directors. "The ordinary directors were not entitled to any say on the question, which was the only one considered at the meeting. If they had been summoned and had come to the meeting they could have been directed by the permanent directors to retire, and could not have refused. It seems to me in any case to be carrying technicality to an absurd length to say they ought to have been summoned to the meeting in order that they might be directed to retire."

Slesser, L.J., took a different view. While he agreed that under the articles the ordinary directors had no powers of voting in respect of, and no control over, the financial affairs of the company or the management of the company's business, yet the articles clearly contemplated that at a board meeting the ordinary directors should normally have the right to attend, and the learned Lord Justice thought they were entitled to attend and do all things except vote, and on the authorities I have mentioned, the meeting at which it was resolved to institute proceedings was consequently invalid and the action was improperly started for want of authority of the directors.

Roche, L.J., considered that the court had not before it sufficient information (e.g., as to the powers already conferred on the ordinary directors by the permanent directors and as to the form which the meeting took) to determine the question of the right of the ordinary directors to attend the meeting.

In a case so largely dependent on its particular facts and on the construction of particular articles it is not perhaps altogether safe to consider that the divergent views of Greer, L.J., and Slesser, L.J., involve a difference of principle, but the question of how far the validity of a meeting may be affected by failure to give notice thereof to persons who have no voting rights thereat may well arise for final determination in the future. It will be remembered that *In re Mackenzie and Co. Limited* [1916] 2 Ch. 450, Astbury, J., thought that preference shareholders with no right of voting were, in the absence of special provisions in the articles, not entitled to be summoned to general meetings. This case does not appear to have been cited to the Court of Appeal.

The other ground on which the defendants attacked the authority of the permanent directors to bring the proceedings was the fact that the company in general meeting resolved that the chairman of directors should be instructed to discontinue the proceedings. The articles (cf. cl. 67 of Table A of the 1929 Act) empowered the directors "to exercise all such powers of the company and do on behalf of the company all such acts as may be exercised and done by the company and as are not by the Statutes or by these articles required to be exercised or done by the company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the Statutes and to such regulations being not inconsistent with the aforesaid regulations or provisions as may be prescribed by the company in general meeting . . ." Greer, L.J., held, and Slesser, L.J., expressed the opinion, though without deciding the point, that the effect of such an article was that the shareholders could not without altering the articles interfere with the powers vested by the articles in the directors. At p. 134 Greer, L.J., says: "A company is an entity distinct alike from its shareholders and its directors. Some of its powers may, according to its articles, be exercised by directors, certain other powers may be reserved for the shareholders in general meeting. If powers of management are vested in the directors, they and they alone can exercise these powers. The only way in which the general body of the shareholders can control the exercise of the powers vested by the articles in the directors is by altering their articles, or, if opportunity arises under the articles, by refusing to re-elect the directors of whose actions they disapprove. They cannot themselves usurp the powers which by the articles are vested in the directors any more than the directors can usurp the powers vested by the articles in the general body of the

shareholders." The learned Lord Justice approved the statement of the law on this subject in "Buckley," 11th ed., p. 723; see also *Automatic Self-Cleansing Filter Syndicate Company Limited* v. *Cunninghame* [1906] 2 Ch. 34; *Quin and Axtens Limited* v. *Salmon* [1909] A.C. 442; and *The Gramophone and Typewriter Limited* v. *Stanley* [1908] 2 K.B. 89, where at pp. 105-6 Buckley, L.J., says: "Even a resolution of a numerical majority at a general meeting of the company cannot impose its will upon the directors when the articles have confided to them the control of the company's affairs. The directors are not servants to obey directions given by the shareholders as individuals; they are not agents appointed by and bound to serve the shareholders as their principals. They are persons who may by the regulations be entrusted with the control of the business, and if so entrusted they can be dispossessed from that control only by the statutory majority which can alter the articles. Directors are not . . . bound to comply with the directions even of all the corporators acting as individuals."

A Conveyancer's Diary.

Voluntary Settlement of Expectancy—Property already Received by Trustees.

A RECENT case shows the limit to which the Court will go in applying the doctrine that a voluntary settlement of an expectancy will not be enforced.

In *Re Bowden: Hulbert* v. *Bowden* [1935] W. N. 150, the facts were that by a voluntary settlement dated 9th July, 1868, a settlor assigned to the trustees of the settlement (*inter alia*) the share to which she might become entitled on the death of her father under his will to be held upon the trusts in the settlement mentioned and the settlor gave to the trustees of the settlement full power to receive and give receipts for the same or any part thereof in the name of the settlor.

The settlor's father died in 1869 and in 1871 and on various dates in the years 1872–1874 his executors transferred to the trustees of the settlement the share of the settlor under her father's will.

In 1935 the settlor requested the trustees of the settlement to transfer to her the funds held by the trustees on the ground that she never authorised the executors of her father's will to make any transfer or payment of any investments or cash representing her share thereunder to the trustees of the settlement and that she was not consulted on the occasion of any such transfer or payment or aware that any such transfer or payment was proposed to be made or had been made.

The trustees thereupon issued a summons to have it determined whether they ought to comply with the settlor's demand.

In the first place, the assignment or purported assignment of the interest which the settlor expected to receive under her father's will was a mere *spes successionis* and consequently not property known to our law.

There are well-known authorities on that point. *Re Parsons* (1890), 45 Ch. D. 51, is usually cited in that connection but I may refer to a later case, *Re Mudge* [1914] 1 Ch. 115.

A testatrix by her will dated in 1862 gave a fifth share of her reversionary estate to her daughter W for life with remainder to her children but if she should die without issue (which event happened) "her share to go to her next of kin as if she had not been married." In 1866, J, another daughter of the testatrix, married and by her marriage settlement covenanted that any real or personal property to which she was then entitled for any estate or interest whatsoever in reversion, remainder or expectancy should be settled upon the trusts of the settlement. W died in 1912 without issue and leaving J her sole next of kin.

It was held that the interest which J had at the date of the settlement was a mere *spes successionis* and therefore not assignable at law. It was also decided that although the expectancy could not be assigned, and might be dealt with by contract, the contract in that case was too vague to be enforced.

It may be mentioned that the contract there referred to was a contract for valuable consideration.

Cozens-Hardy, L.J., referred particularly to *Meek* v. *Kettlewell* (1842), 1 Hare, 1114, which was a case of a definite expectancy, an expectancy on the death of a particular individual, and what was decided there was that an assignment by a voluntary deed of such an expectancy had no force or effect at all, there being no property which it would pass; but that if it had been a purported assignment for valuable consideration the court would enforce it as a covenant to do what was necessary to effect the validity of the assignment.

The law as so stated in *Meek* v. *Kettlewell* was adopted, and indeed has been acted upon many times.

A later case which is directly in point in considering *Re Bowden* is *Re Ellenborough: Towry Law* v. *Burne* [1903] 1 Ch. 697.

The settlement in question in that case was (as in *Re Bowden*) a voluntary settlement by deed dated in 1893, executed by J.T.L., by which she granted to trustees the real estate and assigned the personal estate to which she, in the event of the deaths of her brother and sister respectively in her lifetime, might become entitled under their respective wills or intestacies. At that time she had no property in remainder or reversion or otherwise in the estates of her brother or sister, but had an expectation that owing to the state of their health she might become entitled to their property. The sister died in 1895, and the settlor became entitled to and received a share of her estate, and handed it over to the trustees of the settlement. The brother died in 1902, and the settlor became entitled to all his property as his heiress at law and next of kin. The settlor issued a summons to determine the question whether she was bound to transfer to the trustees of the settlement the property of her brother to which she had so become entitled.

In the course of his judgment, Buckley, J., after stating the facts, pointed out that the settlor had, at the date of the settlement, no property or interest in the estates of her brother and sister. She had an expectation arising from the fact that owing to the relationship between them and herself, and to their state of health, she might be the survivor and might under their respective wills or intestacies become entitled to their property. She had neither a future interest nor a possibility coupled with an interest, but only a *spes successionis* which was not a title to property by English law. The learned judge added that on the authorities it could not be doubted that if the settlement had been for value, which was not the case, it could be enforced, and his Lordship continued: "If value be given, it is immaterial what is the form of the assurance by which the disposition is made, or whether the subject of the disposition is capable of being disposed of or not. An assignment for value binds the conscience of the assignor. A court of equity as against him will compel him to do that which *ex hypothesi* he has not yet effectually done."

The decision in that case was that the interest of the settlor, as sole heiress at law and next of kin of her brother, was not (as it was not capable of being) effectually assigned to the trustees of the settlement, and that being voluntary could not be enforced in equity as a covenant to assign. Consequently the settlor was not bound to transfer the property to the trustees.

It will be noticed that the settlor did not ask that the property which she had acquired on the death of her sister should be re-transferred to her.

In *Re Bowden* the settlor was seeking to recover property which had already been transferred to the trustees of the settlement and received by them under the authority contained in the settlement.

In giving judgment, Bennett, J., said that the case was not one in which the assistance of the court was being sought to enforce a voluntary settlement. Under a valid authority, unrevoked, the persons who were appointed trustees of the settlement received the testator's interest in the money, and as soon as they received it, by the settlor's own declaration contained in the instrument of voluntary settlement, it became impressed with the trusts contained in the settlement. His lordship therefore decided that the trustees ought not to transfer the funds, so received by them, to the settlor.

The decision can in fact be supported by the general rule that in the case of a voluntary disposition if the donor or settlor has done everything that is required to be done for vesting the property the subject of the gift or settlement in the donee or trustees, so that there remains nothing further to be done to complete the transaction, equity will not assist the donor or settlor to recover the property. To do so in the case of a settlement would, in effect, be to insert in it a power of revocation which, if not expressed, will not be implied. Of course, in the state of facts which obtained in *Re Bowden*, if the settlor had withdrawn her authority to the trustees to receive the funds before the actual transfer of them to the trustees of the settlement, she would have been entitled to call on the executors of her father's will to pay her and the court could not have enforced the settlement, being a voluntary one, although it was under seal. The settlor, in that case, seems to have complained that she was not informed by the executors of their intention to hand over the property to the trustees of the settlement and so give her an opportunity of intercepting it, but there seems to be no reason why the executors should have told her in view of the explicit authority given by the settlement to the trustees to receive and give a discharge therefor.

The case has a strange aspect because of the length of time (more than sixty years) which had elapsed between the payment to the trustees of the settlement and the claim made by the settlor. I do not know what the trusts of the settlement were, but presumably, interests were created under it which might have been dealt with, very likely for value, and certainly as against persons taking for valuable consideration any interest arising under the settlement the settlor could have no claim. Indeed, I should have thought that laches would have been an answer to the settlor's claim. She had certainly slept on her right (if any) for a very long tine and could hardly have been ignorant of the fact that the trustees had received her share of her father's estate and held it upon the trusts declared by the settlement.

Landlord and Tenant Notebook.

Restrictions on Freedom of Cropping.

The shoulder-note to s. 30 of the Agricultural Holdings Act, 1923, runs "freedom of cropping and disposal of produce," and the first sub-section commences with the phrase "notwithstanding any custom of the country, or the provisions of any contract of tenancy or agreement respecting the method of cropping": but many a practitioner will find it useful to be in possession of materials for disillusioning a tenant farmer whose ideas of the statutory rights conferred are exaggerated.

In a number of ways the freedom given is qualified and curtailed. To begin with, the clause itself proceeds: "of arable lands," and the importance of this limitation was illustrated by the Scots case of *Taylor* v. *Steel-Maitland* (1913), S.C. 562. The facts were that in the course of a claim for compensation for improvements the question arose whether a forcing-house for rhubarb could be included, and one objection was that the lease, which bound the tenant to observe a specified rotation but permitted him to use part of the farm as a market-garden for not more than two consecutive years, forbade the erection of a structure of a permanent nature. The answer to this was that the Agricultural Holdings Act avoided such an agreement; the answer to that was that a market-garden was not arable land. It should also be noted that sub-s. (4) excludes land in grass.

The clause concludes with "or the disposal of crops"; then come the operative words, as it were: "a tenant of a holding shall have full right to practise any system of cropping of the arable land on the holding and to dispose of the produce of the holding." Why "full" I know not; rather pompous, as if a tenant farmers' Magna Carta were being promulgated. However, one cannot say that the adjective restricts: but what of "any system?" There appears to be no decided case on the possible question whether a tenant is thereby forbidden to introduce methods of his own, not previously or elsewhere practised; having regard to the essential objects of the section, one would be inclined to say that such new methods, if sufficiently methodical to amount to a system, are countenanced if not encouraged. Moreover, the second sub-section, as will be seen, affords protection to the landlord apprehensive of damage occasioned by too venturesome theorists.

The first part of sub-s. (1) concludes by conferring the right to dispose of the produce of the holding; as to the meaning of "dispose of" I shall cite a case later.

Then comes a proviso, which obliges a tenant who uses his freedom to make suitable and adequate provision to protect the farm from injury or deterioration. In view of the fact that the statute does not dispense with the covenant to farm according to the rules of good husbandry, this proviso is perhaps unnecessary; but if so, it is none the less a useful reminder. And it goes on to enact that in the case of freedom of disposal the tenant must satisfy the obligation by returning to the holding the full equivalent manurial value of whatever he removes in contravention of custom, contract or agreement. I believe that the requirement has been much discussed by scientists, but there is no record of any litigation resulting from the proviso, and probably in practice the time-honoured good husbandry principle is consciously or unconsciously applied in most cases.

The first sub-section concludes with another limitation, which enacts that it shall not apply, in the case of a tenancy from year to year, as respects the year before the tenant quits or any period before he gives or receives notice to quit "which results in his quitting the holding"—a curious qualification, this, and presumably a recognition of the fact that a notice to quit is often merely a factor in driving a bargain—and in any other case, as respects the year before the termination of the tenancy. A tenancy of an agricultural holding has, even when for a fixed term, to be terminated by notice; but the tenant for term of years may enjoy his "full" right longer.

This limitation is of the greatest importance; true, the view is held in scientific circles that modern inventions have made it undesirable, but while it remains on the statute book lawyers must appreciate it. In so far as it deals with cropping, another Scots case, *Gordon* v. *Hogg* (1912), S.C. 786, illustrates its effect; a tenant sowing a white crop in his last year was held to be obliged to sow grass with it, or to permit grass so to be sown, in order to comply with the five-shift rotation imposed by the lease. In so far as it restricts freedom of disposal, it is not limited in scope to produce produced in the last year. A covenant by which a tenant agreed that he would not "during the last year . . . sell any of the hay . . . which should arise or grow on the said farm" was construed in *Gale* v. *Bates* (1864), 33 L.J. Ex 235, to include any hay of any year which happened to be on the premises, and this decision was applied in the Agricultural Holdings Act case of *Meggison* v. *Groves* [1917] 1 Ch. 158, so that any tenant farmer who wishes to rely on the section in defiance of custom or contract must get rid of whatever he is forbidden but anxious

to get rid of before the last year commences or before notice to quit is served.

The last-mentioned authority also decided the meaning of "dispose of" in this way; the landlord complained of a sale of hay which had been agreed to on the 24th March, when offer and acceptance were made and given, but not in a form sufficient to satisfy the statutory requirements as to evidence. However, the purchaser had posted his cheque on the 25th and it had arrived on the 26th. The question was, then, whether an unenforceable contract made before the last year commenced was protected by the Agricultural Holdings Act. This point was decided by reference to the Sale of Goods Act, 1893, ss. 18 and 19, which contain the principles and rules for ascertaining when property passes: it was held that produce is disposed of when the ownership vests in someone else, though the evidence is not in existence at the time.

The second sub-section speaks of a tenant exercising his rights under the section in such a manner as to injure or deteriorate the holding; which seems to be arrant nonsense as it is put; what is of course meant is that the rights conferred do not extend to a right to injure or damage the farm. A landlord so aggrieved is given a special right to damages, and, in apt cases, injunction. It seems a little difficult to know how to frame a claim for damages under the sub-section. To ask for damages for exercising a right seems to invite a summons to strike out proceedings as disclosing no cause of action. And exercising a right is up to a point a very subjective matter; it must be difficult for a landlord to know whether a tenant trying to get too much out of the land is or is not exercising rights he may never have heard of. However, the present sub-section does give those landlords who distrust arbitration a chance of seeking justice in the King's courts.

Our County Court Letter.

THE REMUNERATION OF AUCTIONEERS.

In the recent case of *Bosley & Harper* v. *Cohen*, at Shipston-on-Stour County Court, the claim was for £68 11s. 4d. as the price of goods sold. The plaintiffs conducted a produce market at Moreton-in-the-Marsh, at which the defendant had bought poultry through two agents, one of whom was his son. Under a verbal arrangement made in December, goods bought by these agents (on credit) were sent to London, and cheques were received for several consignments—but not for those most recently sent. The defendant's case was that he had withdrawn the authority to his son, who also had his own business. The later consignments were bought by the son, on his own account, and the defendant therefore denied liability. It was pointed out for the plaintiffs that the son had never bought anything in his own name, and His Honour Judge Randolph, K.C., held that, if the defendant desired his son to cease buying, he should have withdrawn the son's authority. Judgment was given for the plaintiffs, with costs.

HIRE OF EXCAVATORS.

In the recent case of *Abelson & Co.* v. *Fletcher & Co. Ltd.*, at Birmingham County Court, the claim was for £97 for the hire of an excavator, and the counter-claim was for £73 17s. as the amount spent in rendering the machine efficient. The case for the plaintiffs was that the excavator was four years' old (not very old) and had been sent to cut a trench, 2,500 yards long, at Hatfield. It was impossible to guarantee that a trench would be cut straight, as it would depend on the nature of the ground. The defence was that extra trouble was caused in timbering, owing to the trench not being cut straight. A half-inch bolt, and other parts, were missing, and a defective jib could not be fixed. Three unsatisfactory drivers had been sent, and a fourth refused to drive the machine, as it was not in working order. The machine was returned (after three weeks) and another was sent, as the defendants only had three excavators, costing £1,300 each, and a fourth was required. His Honour Judge Ruegg, K.C., remarked that if goods or machines were defective they should be sent back at once. It was a bad system to wait until sued, and then to counter-claim. It was ridiculous to keep a machine three weeks, and then to return it, subject to various charges, e.g., £20 for expenses of obtaining another machine elsewhere, and the engineer's time in travelling to see the new machine. Judgment was given for the plaintiffs for the amount claimed, with costs, and for the defendants on the counter-claim for £11 12s. only, with costs.

THE LIABILITIES OF FURNITURE REMOVERS.

In *Gerrard* v. *Black*, recently heard at Liverpool County Court, the claim was for damages for negligence. The plaintiff's case was that, in November, 1934, his furniture was taken into storage (for 10s. a month) by the defendant, who said that it was unnecessary to lock drawers containing household goods. In February, 1935, the plaintiff resumed possession of the furniture, and it was found that bed linen, towels and clothing were missing from the drawers. The defendant's case was that, although a burglary had taken place at his premises, the plaintiff's goods were untouched. The defendant was ignorant of the contents of the drawers, and, in the absence of evidence of negligence or want of care, he was not responsible for what was in the drawers. His Honour Deputy-Judge Morris held that the articles were substantially handed to the defendant, who was not entitled to rely solely on the fact that he had a proper warehouse. He was responsible for the return of the goods at the proper time, or in default to explain their absence. Judgment was given for the plaintiff for £22 and costs.

Obituary.

SIR JOHN ROSS.

Sir John Ross, the last Lord Chancellor of Ireland, died at Dunmoyle, Co. Tyrone, on Saturday, 17th August, at the age of eighty-one. He was educated at Foyle College, Londonderry, and at Trinity College, Dublin, where he was first classical scholar in 1876. He was called to the Irish Bar in 1879, and in 1891 he took silk and became a Bencher of the King's Inns. He entered Parliament as a Conservative member for Londonderry in 1892, but he was defeated in 1895. Promoted to the Bench of the High Court of Justice in Ireland in 1896, Sir John sat in the Chancery Division until 1921, when he was appointed Lord Chancellor of Ireland. He held that office until it was abolished by statute in December, 1922. He was created a baronet in 1919.

MR. T. BUCKNILL.

Mr. Thomas Bucknill, barrister-at-law, of King's Bench-walk, Temple, died in London on Tuesday, 13th August, in his fifty-first year. Mr. Bucknill was called to the Bar by the Inner Temple in 1907, and practised at the Probate Bar.

MR. S. JOBSON.

Mr. Stewart Jobson, formerly a Master of the Supreme Court, died at Seaton, Devon, on Thursday, 8th August. Mr. Jobson, who was educated at Malvern College and Worcester College, Oxford, was admitted a solicitor in 1886, and became a member of the firm of Messrs. Peacock and Goddard, of Gray's Inn. He was appointed a Master in the Chancery Division in 1912, and later he became a Taxing Master. He retired in 1923, and went to live in Devon, where in 1925 he was appointed a justice of the peace, and for a few years sat regularly on the Axminster Bench.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Will—Construction—Tenancy in Common.

Q. 3204. Testatrix, who died in January, 1935, by her home-made will dated 10th April, 1928, revoked all former wills, appointed two executors and, after directing payment of her just debts, etc., proceeded as follows: "I give and bequeath to my niece A, to my niece B, to my sister-in-law C, to my friend D, I testatrix wish at my death that everything I possess to be equally divided between the four persons mentioned above, both money and clothes and everything I die possessed of." The sister-in-law C, predeceased testatrix, leaving a daughter. Is it rightly assumed that the bequest of residue to the four persons named constitutes a joint tenancy, so that as C predeceased testatrix, the three surviving legatees take the whole of the residue equally between them? It appears from the cases that a mere direction for division will not turn a joint tenancy into a tenancy in common, but it will be observed that the direction here is to divide "equally." It is assumed that in the absence of that word, the division would have been equally, and some doubt is felt whether the inclusion of that word affects what would otherwise have been a joint tenancy.

A. There are numerous cases to support the view that these actual words ("to be equally divided") create a tenancy in common. See Tudor's Leading Cases on Real Property, etc., 4th ed., p. 283, and cases there cited. Amongst these cases a relatively recent one is *Davis* v. *Bennet*, 31 L.J. Ch. 337. We express the opinion that a tenancy in common was created and that the share of the sister-in-law who predeceased the testatrix (that of C) lapses. See Tudor's Leading Cases on Real Property, etc., 4th ed., p. 481, and cases there cited. Amongst these cases a relatively recent one is *Re Atkinson, Wilson* v. *Atkinson* [1892] 3 Ch. 52.

Enfranchised Land—Costs of Voluntary Extinguishment of Incidents independently of the Copyhold Act, 1894.

Q. 3205. A is the owner in fee simple of a freehold farm which, until enfranchised on the 1st January, 1926, was copyhold of a certain manor. A has been in negotiation with the deputy-steward of the manor with a view to the extinguishment of the manorial incidents by voluntary agreement under s. 138 (1) (*a*) of the L.P.A., 1922. The parties are now agreed on the amount of the compensation of the lord and to the deputy-steward. The deputy-steward, however, insists that the fee of the lord's solicitor, which is prescribed by the Solicitors' Remuneration Act General Order of 1926, shall be paid by A. A, on the other hand, maintains that the lord should pay his own solicitor himself, as A will, of course, have to pay the fee of her solicitor, and she contends that it is unreasonable that she should be asked to pay the costs of the lord's solicitor as well. The deputy-steward, in support of his contention, has referred to s. 139 (1) (iv) of the L.P.A., 1922, and to cl. 4 in the form of compensation agreement in the Thirteenth Schedule. Section 139 (1) (iv) refers to "... costs or expenses paid or incurred by the lord which are by virtue of this Act or by agreement recoverable from the tenant ..." On A's behalf we have expressed the opinion that the costs or expenses recoverable by virtue of the Act refer to such items as the cost of a declaration required in support of title (s. 138 (5) (vi)) and any other costs of the lord are only recoverable from the tenant where the tenant agrees to pay them, which in this case she is not willing to do. Clause 4 of the compensation agreement, we contend, should be read in the light of this construction of s. 139 (1) (iv). On the other hand it may be argued, so far as the costs of the compensation agreement are concerned, that once the compensation has been agreed and paid, any compensation agreement is for the benefit of the tenant only and if she requires an agreement she should pay all the costs. Reference is also made to para. 4 in the 14th Sched. to the Act. We shall be glad of your opinion on the following two points:—

(I) Whether, having regard to s. 139 (1) (iv) of the Act, and cl. 4 of the compensation agreement, the lord is entitled to insist that his solicitor's fee be paid by the tenant, and

(II) If not, whether, if the parties fail to come to an agreement, and, after the incidents have been extinguished on the 1st January, 1936, the lord applies to the Minister to determine the compensation to be paid under s. 140 (*a*), his insistence upon payment of his solicitor's fee by the tenant would constitute "unreasonable conduct" on his part, so that the Minister would order the costs of the application to be paid by the lord.

A. (I) It is understood that the proposed agreement is one independently of the Copyhold Act, 1894. If this is so then the costs will fall as the parties may agree, and if agreement is not reached then the whole matter will fail. The requirements of lord or tenant would seem to be in their own discretion. It is to be noted that L.P.A., 1922, s. 139 (1) (iv) refers to "costs or expenses paid or incurred by the lord which are ... *by agreement* recoverable from the tenant."

(II) We do not think so. There is no duty upon the lord to enter into a voluntary agreement of this nature. If, in the normal case of an application to the Minister under L.P.A., 1922, s. 140, the costs are to fall upon the tenant, then presumably the lord is not unreasonable in asking for his costs upon a voluntary agreement.

Dairyman's Restrictive Covenant.

Q. 3206. A.B. is a roundsman employed by a large dairy combine. He commenced work at the age of ten years under C.D., the original proprietor of the business, which has grown to large proportions and is now a limited liability company. After the death of C.D. changes were made in the directorate, and A.B., in common with other employees, was required to sign a service agreement containing (*inter alia*) the following clause: "The employee shall not during the continuance of the said service be engaged in or assist in carrying on any dairyman's business other than that of the employers nor shall he as master or servant within two years after the termination of such service solicit or serve with milk or dairy produce any person who during such service and within one year prior to such termination has been a customer of the employers and served by the employee on their behalf." We should be glad of an opinion as to whether—

(1) This clause is wholly bad and unenforceable so far as regards the action of the employee after the termination of his service, as being intended to prevent competition and as being against public policy.

(2) If the employee can be restrained from "soliciting" customers of his present employers (many of whom were secured by A.B.), can he also, in the event of his commencing business on his own account or joining another firm, be restrained from "serving" them, if requested to do so?

A. The covenant is unlimited as regards space, and is therefore applicable to the whole of the country. The clause is accordingly void as being in undue restraint of trade, notwithstanding the time limit of two years. See *Nevanas* v. *Walker and Foreman* [1914] 1 Ch. 413. The first question is answered in the affirmative, and the second does not arise, as the clause is wholly bad and unenforceable.

Forfeiture of Lease.

Q. 3207. In 1930 our client, A, granted a twenty-one-year lease of shop property to two partners, P and Q, the lease containing the usual proviso for re-entry for breach of covenant or non-payment of rent. Differences arose between P and Q, and P withdrew from the business, leaving Q to carry it on. There was no actual dissolution of partnership, nor were any accounts taken, and Q states that P owes the partnership a substantial sum owing to excessive drawings. Q found a purchaser, X, for the lease and goodwill, his intention being to take the whole of the purchase money himself to balance the amounts overdrawn by P. Q let X into possession during last Christmas quarter, and Q and X then instructed us to carry through the assignment of the lease and goodwill. P refuses to execute any assignment, but does not seem disposed to take any more active steps to prevent the sale going through. To avoid litigation between P and Q the suggestion has been put forward by Q that A should forfeit the existing lease and grant a fresh lease to X. If this course is adopted it is understood that X will be willing to pay the agreed purchase price to Q, who will presumably have to treat it as money due to the partnership firm for which he is liable to account to P. The quarter's rent due Christmas is outstanding, though X is able and willing to pay it when the position is regularised. We should appreciate your views on the following points :—

(1) Can A forfeit the existing lease and grant a fresh lease to X without first obtaining vacant possession of the premises ? The authorities state that a landlord must give clear indication of his intention to forfeit the lease, e.g., by starting proceedings for ejectment. As previously mentioned, X is in possession.

(2) If A can forfeit the existing lease, must he wait six months before granting a new lease to X, in case P should apply for relief ? Relief against forfeiture for non-payment of rent may apparently be given after there has been a peaceable resumption of possession by the landlord : see *Howard* v. *Fanshawe* [1895] 2 Ch. 581.

(3) If A forfeits the existing lease and grants a fresh lease to X, can he then safely accept payment from X of the quarter's rent due Christmas last under the old lease ? We gather from the authorities that once a lease has been forfeited subsequent acceptance of rent will not invalidate the forfeiture.

A. (1) A can forfeit the existing lease, and grant a fresh lease, without first obtaining vacant possession.

(2) A need not wait six months before granting a new lease to X, as P cannot apply for relief without the concurrence of Q.

(3) If A forfeits the existing lease and grants a fresh lease to X, A can safely accept the Christmas rent (under the old lease) from X. The amount can be regarded as a premium on the grant of the new lease. In any case, it will not be paid by X as the agent of P and Q so as to revive the old lease.

The position seems to be that the firm was in fact dissolved, whereupon P became a trustee for Q of his (P's) interest in the lease. Q has been carrying on the business, and is entitled to the lease in severalty, as the joint tenancy came to an end with the partnership. Q is entitled to a charging order (for the excessive drawings of P) upon P's share in the lease. Q could therefore obtain an order for sale of P's share, and could assign it to X. Q is entitled to surrender the old lease, as sole beneficial owner. If P objects, proceedings could be commenced against him for a vesting order (of his share in the lease) under the T.A., 1925, s. 44 (vi).

Reviews.

Outlines of Central Government, including the Judicial System of England. By JOHN J. CLARKE, M.A., F.S.S., of Gray's Inn and the Northern Circuit, Barrister-at-Law. Seventh ed. 1935. Crown 8vo. pp. x and (with Index) 354. London : Sir Isaac Pitman & Sons, Ltd. 6s. net.

This is a completely revised and enlarged edition of what has come to be regarded as a standard work. It embodies the amendments in income tax law resulting from the Finance Act, 1935, and deals with the main features of the new Constitution of India. The fact that six editions have already been exhausted is a sufficient guarantee of the appreciation with which the learned author's work has been received by students for whose especial benefit it has been chiefly intended. In the present edition the chapters dealing with various State departments have been standardised for comparative purposes—the method of administration being indicated in every instance.

The Law of Fire Insurance. By SANFORD D. COLE, Barrister-at-Law. 1935. Demy 8vo. pp. (with Index) 157. London : Sir Isaac Pitman & Sons, Ltd. 6s. net.

This volume provides a complete guide to the law relating to fire insurance. It is written in the form of a digest, with explanatory notes, giving all necessary references to authorities on the points annotated. It will be found handy and convenient by the practising lawyer whose purpose will be served by something shorter than a voluminous standard text-book ; whilst for the student preparing for any examination—e.g., that of the Chartered Insurance Institute—its contents will be found all-sufficient. A form of standard policy, such as has been adopted by the Fire Offices Committee is printed in the appendix.

Books Received.

The British Year Book of International Law. 1935. Sixteenth Year of Issue. Crown 4to. pp. vi and (with Index) 248. London and Oxford : Humphrey Milford, Oxford University Press. 16s. net.

Building Societies Year Book, 1935. Compiled and Edited by GEORGE E. FRANEY, O.B.E. Demy 8vo. pp. 516. London : Franey & Co., Ltd. 7s. 6d. net.

Second Report of the Committee on The Standardisation and Simplification of the Requirements of Local Authorities. 1935. London : H.M. Stationery Office. 6d. net.

Supplement to The Law of Income Tax (Sixth Edition), 1935. By E. M. KONSTAM, one of His Majesty's Counsel, a Judge of County Courts. London : Stevens & Sons, Ltd. ; Sweet & Maxwell, Ltd. 2s. 6d. net.

Some Notes on Unemployment. By P. H. BLACKWELL, F.C.A. 1935. Demy 8vo. pp. 44. London : Gee & Co. (Publishers), Ltd. 1s. net.

Basic Accounting Principles Re-examined. By B. J. DAVIS, F.C.A. 1935. Demy 8vo. pp. 11. London : Gee & Co. (Publishers), Ltd. 6d. net.

Tolley's Complete Income Tax Chart. Twentieth Edition, 1935-36. By CHAS. H. TOLLEY, A.C.I.S., F.A.A., Accountant. London : Waterlow & Sons, Ltd. 4s., post free.

Executorship Law and Accounts. By the late D. F. DE L'HOSTE RANKING, M.A., LL.D., ERNEST EVAN SPICER, F.C.A., and ERNEST C. PEGLER, F.C.A. Twelfth Edition, 1935. Edited by H. A. R. J. WILSON, F.C.A., F.S.A.A. Crown 4to. pp. xliv and (with Index) 399. London : H. F. L. (Publishers), Ltd. 15s. net.

To-day and Yesterday.

Legal Calendar.

19 August.—On the 19th August, 1659, about a year after Oliver Cromwell's death, there expired Sir Edmund Prideaux, Attorney-General under the Commonwealth —"a generous person and faithful to the Parliament's interest, a good Chancery lawyer." He was equally faithful to his own interests, for his practice at the Bar was worth about £5,000, and besides this he had the office of Postmaster for all the inland letters, which brought him another £15,000. He left a large fortune. In his honour it should be said that he refused to act in the prosecution of Charles I.

20 August.—On the 20th August, 1892, Sir Charles Russell became Attorney-General for the second time on the return of Gladstone to power. His career at the Bar was drawing to a close, and the last great case in which he appeared was the Behring Sea arbitration, in which he represented Great Britain. In 1892, his fees amounted to £15,299; in 1893 to £22,517, and in the first part of 1894 to £10,309. In May of that year he succeeded Lord Bowen as a Lord of Appeal and was raised to the peerage as Lord Russell of Killowen.

21 August.—On the 21st August, 1735, at the Lewes Assizes, "a man who pretended to be deaf and dumb was indicted for a barbarous murder and robbery. He had been taken up on suspicion. . . . When he was brought to the bar he would not speak or plead, though often urged to it, and the sentence to be inflicted on such as stand mute read to him. Four or five persons in court swore they had heard him speak. . . He was carried back to Horsham Gaol to be pressed to death if he would not plead." Under a weight of 400 lbs. he still lived and only finally expired when the executioner who weighed 17 stone, added his weight to the board.

22 August.—On the 22nd August, 1697, "old Mr. Wallop, cursitor baron," died little more than a year after his appointment to that not very exacting office in the Court of Exchequer had given him rest from his forensic labours. During the reigns of Charles II and James II he had enjoyed a busy and prominent practice. In state trials he was generally retained against the Crown and incurred the active antipathy of Chief Justice Jeffreys who never lost an opportunity to insult him in court and to pour contempt on his arguments.

23 August.—On the 23rd August, 1348, John de Stratford, Archbishop of Canterbury, died at Mayfield. Under Edward III he had been three times Lord Chancellor. In his time the Court of Chancery was beginning to take shape. This was the period when it became fixed in Westminster Hall and the marble chair became the symbol of the Chancellor's authority. Political labours prevented Stratford from attending personally to his judicial duties, which were consequently entrusted to deputies. His charity, his humble and pleasing manners, his natural good sense and general learning were universally acknowledged.

24 August.—Lord Chancellor Brougham was in an exceptionally bad temper on the 24th August, 1831. To one counsel he said: "I must request you to confine yourself to new matter, and not to repeat the arguments I have already heard. It is really no pleasure to hear the same arguments repeated by a third counsel. I sat here till twelve o'clock last night and did not get through a single bankrupt petition." Soon after, he was disturbed by a noise in court and in an extraordinarily loud tone cried: "Stop, sir. I will have the court cleared; there are persons talking louder at this moment than the counsel."

25 August.—On the 25th August, 1868, Anthony Cleasby was appointed a Baron of the Exchequer, in which office he served for ten years.

The Week's Personality.

Mr. Baron Cleasby, though a sound lawyer, was by no means a great judge. Cautious and diffident in the extreme, he only succeeded in puzzling juries by his all too conscientious attempts to explain the whole law to them. In criminal courts he was never at home. His best work was done in his written judgments, for he spared no pains to make them thorough and exhaustive, and from this point of view, he was an excellent and reliable judge. He had a fine presence and on the Bench was a most dignified figure. He was a good-hearted judge and had a way of sternly rebuking prisoners for the enormity of their crimes and finishing up with the anti-climax of a ridiculously light sentence. Thus he would say: "You are one of the worst men I have ever tried and the sentence of the court is that you be imprisoned for one month." Thus it came about that he was popular, not only with Bench and Bar, but with the criminal classes too, and prisoners who had the choice between quarter session and assizes when Cleasby went the circuit invariably chose assizes. His sentence of a year's imprisonment and twenty strokes of the birch on a youth who had pointed an unloaded pistol at Queen Victoria much annoyed her by its leniency.

Lawyers at Arms.

The Inns of Court Regiment, the "Devil's Own," has lately been in camp at Petworth Park, carrying on with martial zeal the long tradition which has so often led the harmless necessary lawyer to seek the bubble reputation, even in the cannon's mouth, when fit and proper occasion arose. One of the most extraordinary, but least known, examples of such a transformation was Alexander Rigby, a barrister, who held a colonel's commission on the Parliamentary side in the Civil War and afterwards became a Baron of the Exchequer. He began his military career in 1643, in a blaze of glory, by capturing four hundred Royalist soldiers, together with their commander and "four or five ensignes or cullers of brave silk." They fought on a Sunday, and after prayers, according to Rigby, "we speeded up to the enemy with such resolution and courage in all the captains and common soldiers as by their deportment I might have rather deemed that they made haste to have saluted their friends than to have encountered their enemies."

A Fighting Barrister.

We are told that "the feat was more discoursed about because Rigby was a lawyer," but his martial reputation lost much at the siege of Lathom House, the mansion of the Earl of Derby, a fellow member of his at Gray's Inn. "Tell that insolent rebel Rigby he shall neither have person, goods or house!" cried the Countess, and she defended the place so desperately that it was not taken. Rigby and his men toiled desperately in the trenches, but effected nothing. Shortly after the raising of the siege, he was nearly captured by the advancing Royalists and only escaped by an amusing trick. Prince Rupert and his men were just forcing their way into Bolton when, in the confusion, Rigby "springs up before them like a resolute commander, calls them up saying 'March on! The town is our own!' and so riding and bestirring himself among them there was no notice taken of him, but when he saw a fit time for him he took it and with one man went his way towards Yorkshire." After this he vanished for a while turning to more peaceful pursuits and finally, in 1649, it was ordered that Colonel Rigby should be a Baron of the Exchequer.

An official of the Ministry of Transport stated last Monday that an examination of the latest statistics of road accidents showed that most of them could have been avoided by careful regard for the principles laid down in the new Highway Code, and, as copies of this had been distributed to householders and other responsible persons throughout the country, it was hoped that a reduction of casualties would follow.

Notes of Cases.

Appeals from County Courts.

Joseph *v.* East Ham Corporation.

Slesser and Roche, L.JJ., and Swift, J.

26th and 29th July, 1935.

ELECTRICITY — LOCAL AUTHORITY — POWERS — CONSUMER —ACCOUNT—*Bonâ fide* DISPUTE—METER—NO ELECTRIC INSPECTOR APPOINTED — SUPPLY DISCONNECTED — WHETHER ACTION WRONGFUL—ELECTRIC LIGHTING ACT, 1882 (45 & 46 Vict., c. 56), s. 21—ELECTRIC LIGHTING CLAUSES ACT, 1899 (62 & 63 Vict., c. 19), Sched.—ELECTRIC LIGHTING ACT, 1909 (9 Edw. 7, c. 34), s. 18—ELECTRICITY SUPPLY ACT, 1919 (9 & 10 Geo. 5, c. 100), s. 2.

Appeal from Bow County Court.

The plaintiff was lessee and occupier of a dwelling-house and offices in East Ham, for which district the defendants were the undertakers under the Electricity Acts. Having supplied him with electricity and power, they delivered him an account for electricity alleged to have been consumed on his premises between the 7th March and the 7th June, 1934. As the account showed a very large increase in the units charged against him in previous quarters, the plaintiff refused to pay the full amount, alleging that the meter must have registered the wrong amount. After some correspondence, the defendants, in November, 1934, cut off the plaintiff's supply. The plaintiff in this action claimed an injunction restraining the defendants from cutting off the supply. His Honour Judge Owen Thompson held that there was a *bonâ fide* dispute and that the discontinuing of the supply was wrongful. The defendants appealed.

SLESSER, L.J., dismissing the appeal, said that the plaintiff did not dispute that under para. 57 of the Schedule to the Electric Lighting (Clauses) Act, 1899, the register of the meter should be conclusive, but contended that there had been installed no meter complying with the requirements of the statute. His Lordship referred to paras. 49 to 53 of the Schedule to the Act of 1899, as amended by the Second Schedule to the Electric Lighting Act, 1909, and to s. 2 of the Electricity Supply Act, 1919. An electricity meter must be of construction and pattern approved by the Electricity Commissioners. It must also be certified by an electric inspector, but as in East Ham none had ever been appointed within the meaning of the Acts, it followed that there had never been a properly certified meter. Therefore, it was not possible for the defendants to say that there was a sum due within s. 21 of the Electric Lighting Act, 1882, which in case of non-payment authorised the local authority to disconnect the electric line. As to s. 18 of the Electric Lighting Act, 1882, there was here a *bonâ fide* dispute and the defendants could not refuse to supply electricity.

ROCHE, L.J., and SWIFT, J., agreed.

COUNSEL: *Croom-Johnson*, K.C., and *Amiend Jackson*; *Eversheds*, K.C., and *W. Raeburn*.

SOLICITORS: *Wilson & Blew*; *Gulliver & Burrow*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re a Judgment Debtor (No. 23 of 1934).

Luxmoore, J. 1st July, 1935.

BANKRUPTCY—DEBTOR—JUDGMENT SUMMONS—COMMITTAL ORDER—HIGH COURT PRACTICE—DEBTORS ACT, 1869 (32 & 33 Vict. c. 62), s. 5.

A judgment debtor, having failed to comply with an order directing payment by certain monthly instalments, the creditor applied to the Judge in Bankruptcy for a committal order. During the hearing his lordship said that, inasmuch as some doubt had arisen with regard to the principles on which committal orders were made under the Debtors Act, 1869, a statement had been prepared by the Judges in Bankruptcy in consultation.

LUXMOORE, J., read the statement. The power of the court depended on s. 5 of the Act. It could commit to prison a person making default in payment of a debt, provided it was proved that since the judgment he had had the means to pay. The court could direct payment by instalments. On a judgment summons asking for committal, an order for payment by instalments could be made, even if the judge were not satisfied of the existence of means (*Dillon* v. *Cunningham*, L.R. 8, Ex. 26; *Montgomery* v. *De Bulmes* (1878), 2 Q.B. 420; *Woodham Smith* v. *Edwards* [1908] 2 K.B. 899; *In re Mitchell*, 54 SOL. J. 252). Before an instalment order could be made, there must be an application for committal (see *Reg.* v. *Judge of Brompton County Court*, 18 Q.B.D. 213), and it was the practice not to commit on the first application, but to give the debtor a chance of paying by instalments, his probable future income being considered in adjusting the instalments, since the basis of the committal jurisdiction was wilful refusal to pay in spite of having the means (see *Stoner* v. *Fowle*, 13 App. Cas. 20, at p. 24). In case of default in the instalments, the creditor might issue a fresh summons. Then the court must consider whether the debtor had had the means to pay. His future prospects could not be considered. The default did not consist in the failure to pay the instalment, but in the failure to apply to its payment available means. Committal was a punishment, not for poverty or the reckless incurring of liabilities, but for the dishonest use for other purposes of funds available to pay what was ordered to be paid. Thus, in the case of a salary earner with no other means, it must be ascertained what was the surplus over the sum reasonably required to maintain the debtor and his dependents. *Primâ facie*, a committal order should issue forthwith, but where a debtor genuinely wished to make good his default, the court might direct the order to lie in the office if the moneys were paid within some named period or by named instalments. On this point, prospects of future means were material, but in the case of a salary earner, with no other means, the prospects of future payment only became an element for consideration when the sum for which he was to be committed was fixed, and then only for the purpose of deciding what terms of suspension would allow a chance of making good the default. During the running of a committal order, it was the practice in the High Court to suspend the operation of the instalment order.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Bowden's Settlement; Hulbert *v.* Bowden.

Bennett, J. 19th July, 1935.

TRUSTS—VOLUNTARY SETTLEMENT—MONEYS RECEIVED BY TRUSTEES AS AGENTS — IMPRESSED WITH TRUSTS — INTEREST OF SETTLOR—WHETHER SETTLOR ENTITLED TO CLAIM FUNDS.

In 1868, the defendant was proposing to become a nun and made a voluntary settlement assigning to trustees, their executors, administrators and assigns all the share and interest to which on the death of her father "in her lifetime she may become entitled under and by virtue of his will or any codicil thereto or as one of his next of kin or otherwise . . ." She appointed the trustees her agents to receive whatever might so come to her and also her attorneys to receive any property that might become hers. Trusts were declared. The father died in 1869, and the defendant, now a professed nun, had not revoked the powers given to the trustees. They received substantial sums of stocks under the father's will and these they and those who in course of years succeeded them held on the trusts of the voluntary settlement. In 1933, it occurred to the defendant that she might not have settled what came to her under her father's will and requested the trustees to

transfer to her as her absolute property the investments held by them. The trustees took out an originating summons asking whether they should do so.

BENNETT, J., in giving judgment, said that there was no objection to the appointment of the trustees as the defendant's agents and attorneys. The defendant's claim was based on *Meeke* v. *Kettlewell*, 1 Hare 464, and *In re Ellenborough; Towry-Law* v. *Burne* [1903] 1 Ch. 697, and it was argued that this settlement being a voluntary settlement was either void or unenforceable. The authorities did not support this. The two cases decided that where you needed the help of a court of equity to enforce a voluntary settlement because the property subject to the settlement had not been transferred to the trustees, the court would not render any assistance. But here no one was seeking to enforce a voluntary settlement. Under this settlement, which was unrevoked, the trustees received the defendant's interest in the money under her father's will, and immediately they received it, it became by her own act impressed with trusts. No help was needed from a court of equity to put this property into the trustees. This property could not be transferred to the defendant.

COUNSEL: *A. G. N. Cross* (*Greenland* with him); *R. Goff*; *P. Walters*; *R. Horne* (*Roger Turnbull* with him); *J. Stamp* (for the Attorney-General).

SOLICITORS: *Metcalfe, Hussey & Hulbert*; *Treasury Solicitor.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Commissioners of Inland Revenue *v.* Ramsay.

Finlay, J. 25th July, 1935.

REVENUE—SUR-TAX—DENTAL SURGEON—PRACTICE PURCHASED BY INITIAL CASH PAYMENT AND ANNUAL PERCENTAGE OF PROFITS FOR FIXED NUMBER OF YEARS—WHETHER PAYMENTS CAPITAL OR INCOME—WHETHER ADMISSIBLE AS DEDUCTION IN COMPUTATION OF TAX.

Appeal by the Crown against a decision of the Special Commissioners for Income Tax reducing an assessment to sur-tax for the year ended the 5th April, 1934, made upon the respondent, a dental surgeon. He was an assistant to one T. V. Smith, a dental surgeon practising in Wimpole Street, London. On the 21st August, 1931, Smith died having appointed his wife sole executrix of his will and left her all his residuary estate. On the 28th September, 1932, the respondent and Mrs. Smith agreed that the former should purchase Smith's practice, with goodwill and equipment, for what was stated to be a primary price of £15,000, an initial payment being made of £5,000 in cash. Thereafter the respondent was to pay Mrs. Smith annually for 10 years, in respect of the balance of the purchase price, one quarter of the net profits of the practice. The respondent was to pay that percentage of the profits for 10 years, even if the payments aggregated more than the £10,000 balance. Mrs. Smith was to accept the ten annual payments in full satisfaction, even if they came to less than £10,000. If the respondent died before he had paid £5,000 of the balance, Mrs. Smith was to take the proceeds of a life insurance policy for £5,000 which the respondent had effected and had assigned to her as security. The purchase having taken effect as from the 16th August, 1932, the first accounts under it were made up a year later and showed that a quarter of the net profits for the year amounted to £886, which the respondent duly paid to Mrs. Smith.

The respondent claimed a right to deduct the £886 for purposes of computing sur-tax, it being contended on his behalf that the practice was not sold for a fixed capital sum but for £5,000 down and further variable yearly sums in the nature of income payments, and that the £886 was accordingly not an instalment of a capital sum but an annual sum diminishing his income and admissible as a deduction. For the Crown it was contended that the £886 was an instalment, in the nature of capital, of a fixed purchase price. The Commissioners accepted the respondent's view, allowed the deduction, and reduced the assessment accordingly.

FINLAY, J., said he would refer only to two of the authorities in which this difficult matter had been discussed; the first was *Chadwick* v. *Pearl Life Insurance Company* [1905] 2 K.B. 507, particularly the words of Walton, J., at p. 514; the second was *Jones* v. *Commissioners of Inland Revenue*, 7 T.C. 310, where, in the words of Rowlatt, J., a property was sold for a certain sum and in addition the vendor took an annual sum which rose or fell with the chances of the business. Rowlatt, J., had decided that the vendor in those circumstances took an income. The Commissioners in the present case had based their decision on that judgment. It was conceded that the parties here had desired that the payment should, as between themselves, be regarded as a capital payment. That element, however, although important, was not decisive, for one had to consider the real nature of the payment. If something were sold for a fixed sum payable partly or wholly by annual instalments, the payments would simply be instalments of a capital sum and therefore capital. If, on the other hand, a thing were sold partly or wholly for an annual share of profits in a business for so many years, the annual payments were income. Here the so-called primary price of £15,000 did, at first sight, give the appearance that the annual payments were instalments of capital; but that price was not in fact the real price, which might prove to be either more or less than £15,000. He (his lordship) therefore agreed with the view taken by the Commissioners, and the appeal must be dismissed.

COUNSEL: *The Attorney-General* (Sir Thomas Inskip, K.C., M.P.) and *R. P. Hills*, for the appellant; *Terence Donovan*, for the respondent.

SOLICITORS: *The Solicitor of Inland Revenue*; *Arthur Benjamin & Cohen.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Knott *v.* Knott.

Sir Boyd Merriman, P., and Bucknill, J. 7th June, 1935.

HUSBAND AND WIFE—MAINTENANCE ORDER—APPLICATION TO DISCHARGE ON GROUND OF ADULTERY—DIVORCE PETITION BY WIFE—CONFLICTING JURISDICTIONS—APPEAL FROM ORDER TO DISCHARGE—SUMMARY JURISDICTION (SEPARATION AND MAINTENANCE) ACTS, 1895 TO 1925 (58 & 59 Vict., c. 39), ss. 4, 7, 10 and (15 & 16 Geo. 5, c. 51), s. 2.

This was an appeal by the wife from an order of the Wealdstone (Middlesex) Justices, discharging a maintenance order on the ground of the wife's adultery subsequent to the making thereof. Pending the husband's application to discharge, the wife petitioned for divorce. The magistrates, notwithstanding, heard evidence and discharged the order. The wife appealed on the ground that the magistrates had no jurisdiction and alternatively that they were wrong in law and on the facts in revoking the order.

Sir BOYD MERRIMAN, P., in the course of delivering a considered judgment, said that at the hearing, the wife's solicitor had taken the point that the magistrates had no jurisdiction in view of the decision in *R.* v. *Middlesex Justices, ex parte Bond* [1933] 1 K.B. 72; 2 K.B. 1 (148 L.T. 134), and *Higgs* v. *Higgs* [1934] P. 95 (78 SOL. J. 768). The magistrates ruled that they had jurisdiction and discharged the order. The broad question was whether magistrates had jurisdiction to decide the issue of a wife's alleged adultery at a time when there was pending in the Divorce Court a suit between the spouses in which that very issue must necessarily be decided. In the present divorce suit the wife, who was petitioner, had not shown in her petition that she was invoking the discretion of the court on the ground of her own alleged adultery, and the husband had not yet

filed his answer. It would have been possible to adjourn the hearing of the appeal until it was known whether the husband had counter-charged adultery in his answer, but counsel had agreed that it was inevitable that the question of the wife's adultery would be put in issue. He (his Lordship) considered that the Divisional Court was bound by its own decision in *Higgs* v. *Higgs, supra*, following *R.* v. *Middlesex Justices, ex parte Bond, supra*, in which it had been held that during the pendency of a divorce petition no order for maintenance should be made by a court of summary jurisdiction. Counsel for the husband, however, had sought to distinguish those cases in that in both the subject-matter had been identical in respect both of facts involved and the relief sought with that of which the Divorce Court was seised. In the one case it had been maintenance, in the other, custody. It was submitted in the present case that while the issue of adultery might be identical, the relief resulting from the determination of that issue was extremely different, because the Divorce Court had no jurisdiction to set aside the order for maintenance, the magistrates alone having that power under the Married Women (Separation and Maintenance) Act, 1895 (his Lordship here stated that he did not ignore the practical difficulties that might arise from holding that the hand of the magistrates must be stayed until the Divorce Court had decided the issue of adultery). The issue of adultery was the most important issue that could be decided between spouses. If it was undesirable that a court of summary jurisdiction should decide ancillary matters such as custody or maintenance, when there was a matrimonial cause pending, in which such questions might be raised, it was still less desirable that the most important issue of all should be decided by a court of summary jurisdiction when it was pending in the Divorce Court. Moreover, it seemed in the highest degree undesirable that when a Divorce judge came to try in any case the cardinal issue of adultery, that he might be confronted with a judgment by a Divisional Court, holding that the fact had already been established before a court of summary jurisdiction, at the very time when the same issue was actually pending in the Divorce Court. The substance of the matter was that when an issue of adultery was pending in both courts, it should be decided exclusively by the Divorce Court. The finding of the magistrates would therefore be set aside on the ground that they should not have proceeded to a determination of the matter after their attention had been drawn to the conflict of jurisdiction and to the authorities, and the matter would be remitted to them for rehearing, such rehearing to be stayed until after determination of the issue of adultery by the Divorce Court. If in any such case the Divorce Court were satisfied that the suit was not being duly prosecuted, but was merely being used for the purpose of prolonging payments under the order, the court would have ample power to deal with the matter so that the magistrates would regain jurisdiction.

BUCKNILL, J., delivered a judgment in which he concurred.

The appeal was allowed with costs. Leave to appeal was granted.

COUNSEL: *C. W. Meesom*, and *J. W. Jacob*, for the appellant wife; *P. B. Morle* and *C. R. N. Winn*, for the respondent husband.

SOLICITORS: *Edgar H. Hiscocks*: *Pierron & Morley*.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

TABLE OF CASES previously reported in current volume.—Part II.

Legal Notes and News.

Honours and Appointments.

Mr. H. BANN, solicitor, Deputy Town Clerk of Rochdale, has been appointed Town Clerk in succession to Mr. W. H. Hickson, who has retired. Mr. Bann was admitted a solicitor in 1926.

Mr. R. W. HILL, Senior Assistant Solicitor of Chesterfield, has been appointed Deputy Town Clerk of Guildford. Mr. Hill was admitted a solicitor in 1930.

Professional Announcements.

(2s. per line.)

SOLICITORS & GENERAL MORTGAGE & ESTATE AGENTS ASSOCIATION.—A link between Borrowers and Lenders, Vendors and Purchasers.—Apply, The Secretary, Reg. Office: 12, Craven Park, London, N.W.10.

Wills and Bequests.

Mr. Frederick Augustus Adeney, solicitor, of Bedford Row, W.C., and of Hampstead Way, N.W., left £10,073, with net personalty £9,372.

Mr. Edmund Van Heutte Blyton, retired solicitor, of Spalding, left £14,903, with net personalty £6,657.

Mr. Alfred Townshend Cobbold, solicitor, of Woodbridge, Suffolk, left £9,532, with net personalty £9,391.

Mr. Sydney Pitt, solicitor, of Holborn Circus, left £54,706, with net personalty £53,069.

Mr. Montague Flamank Edyvean, solicitor, of Bodmin, left £18,844, with net personalty £15,746.

Notes.

Mr. JOHN LLOYD, solicitor, has tendered his resignation as Clerk of Towyn (Merionethshire) Urban District Council. Mr. Lloyd was admitted a solicitor in 1896.

His Honour Judge RICHARDSON, sitting at Sunderland County Court, discarded his wig and gown owing to the heat and granted a similar concession to barristers.

When an elderly man was charged on remand at Thames Police Court recently with wilfully damaging a plate glass window, valued at £10, it was stated that he had been convicted no fewer than 200 times for various offences, including damage. He was sentenced to six months' imprisonment.

The number of cases of cruelty and neglect reported to the National Society for the Prevention of Cruelty to Children last year was 44,886, involving 109,471 children. The number of cases of actual ill-treatment and assault rose for the seventh year in succession. At 4,814 it was the highest in the society's history.

The Chief Registrar of Friendly Societies, in Part I of his report for 1934, recently issued, states that, at the end of the period under review, there were 30,754 societies on the register (28,153 in England and Wales and 2,601 in Scotland) compared with 31,066 at the beginning of the year (28,437 in England and Wales and 2,629 in Scotland).

The Chancellor of the Exchequer has nominated the following as a panel to represent him when the Industrial Court is sitting to hear claims from Civil Service organisations: Sir FELIX POLE, Mr. H. E. PARKES, Mr. FRANK PICK, Mr. F. C. FAIRHOLME and Mr. L. A. P. WARNER. Mr. Fairholme and Mr. Warner are new nominations and take the place of Sir Andrew Duncan.

An interesting point arose at Wimbledon Police Court last Wednesday, when a summons for disobeying traffic lights was dismissed. Two police officers stated that a cyclist mounted his bicycle on the corner of Hill-road, Wimbledon, and rode past the traffic lights although they were against him. The cyclist said that he walked over the crossing and mounted on the other side.

The August issue of "The Secretary" states that the Chartered Institute of Secretaries at a special general meeting held in July, approved and adopted the proposed scheme of fusion between the Institute the and Incorporated Secretaries' Association Limited. This approval is subject to the consent of the Crown to the grant of a Supplemental Charter and to "allowance" by the Privy Council to the necessary amendments in the bye-laws.

At the examinations of the Corporation of Accountants, held in June, 560 candidates entered—20 for the Preliminary, 271 for the Intermediate, and 269 for the first part, second part and full Final. Of these, 12 passed the Preliminary, 149 passed the Intermediate, and 143 the first part, second part and full Final examination. Mr. William Boyd, Glasgow, was Prizeman in the final examination, and Mr. William T. Nimmo, Glasgow, was Prizeman in the intermediate examination.

Two hundred delegates from English building societies are leaving London on Saturday, 31st August, to attend the fifth International Congress of Building Societies in Austria, from 1st September to 6th September. Sir Harold Bellman, in his presidential address will deal with "Worldwide aspects of building societies." Sir Josiah Stamp will speak on "The common factors of national life," and Sir Enoch Hill on "The development of building society propaganda and publicity in Great Britain compared with other lands."

The annual report of the Railway Assessment Authority states that it was resolved at a recent meeting of the Authority by all the members present other than the Chairman: "That record be made of the high esteem felt for the able and zealous services rendered by Mr. Joshua Scholefield, K.C., as Chairman of the Authority during the past five years, and for the conspicuous impartiality to all parties which he has shown, and that the sincere thanks of the members be given to the Chairman for his unstinted devotion, valued guidance, and never failing courtesy."

AUTUMN ASSIZES, 1935.

The following days and places have been fixed for holding the Autumn Assizes, 1935:—

OXFORD CIRCUIT.—Mr. Justice Hawke.—Tuesday, 8th October, at Reading; Saturday, 12th October, at Oxford; Wednesday, 16th October, at Worcester; Saturday, 19th October, at Gloucester; Saturday, 26th October, at Monmouth; Thursday, 31st October, at Hereford; Monday, 4th November, at Shrewsbury; Monday, 11th November, at Stafford.

NORTH-EASTERN CIRCUIT.—Mr. Justice MacKinnon and Mr. Justice Porter.—Wednesday, 30th October, at Newcastle; Saturday, 9th November, at Durham; Tuesday, 19th November, at York; Monday, 25th November, at Leeds.

SOUTH-EASTERN CIRCUIT.—Mr. Justice Macnaghten.—Saturday, 12th October, at Cambridge; Thursday, 17th October, at Norwich; Wednesday, 23rd October, at Bury St. Edmunds; Monday, 28th October, at Chelmsford. Mr. Justice Humphreys.—Monday, 11th November, at Hertford; Thursday, 14th November, at Maidstone; Saturday, 23rd November, at Kingston; Saturday, 30th November, at Lewes.

MIDLAND CIRCUIT.—Mr. Justice du Parcq.—Tuesday, 8th October, at Aylesbury; Friday, 11th October, at Bedford; Tuesday, 15th October, at Northampton; Saturday, 19th October, at Leicester; Monday, 28th October, at Lincoln; Monday, 4th November, at Nottingham; Tuesday, 12th November, at Derby; Thursday, 28th November, at Warwick. Mr. Justice Hawke and Mr. Justice du Parcq.—Tuesday, 3rd December, at Birmingham.

NORTH WALES AND CHESTER CIRCUIT.—Mr. Justice Lawrence.—Monday, 14th October, at Caernarvon; Saturday, 19th October, at Ruthin; Thursday, 24th October, at Chester.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 29th August, 1935.

	Div. Months	Middle Price 21 Aug. 1935.	Flat Interest Yield.	‡Approximate Yield with redemption
			£ s. d.	£ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	114½	3 9 10	3 1 1
Consols 2½%	JAJO	84½	2 19 2	—
War Loan 3½% 1952 or after ..	JD	105¾	3 6 2	3 1 3
Funding 4% Loan 1960-90	MN	117½	3 8 1	2 19 10
Funding 3% Loan 1959-69	AO	103½	2 18 0	2 16 0
Victory 4% Loan Av. life 23 years ..	MS	116½	3 8 8	2 19 11
Conversion 5% Loan 1944-64 ..	MN	121½	4 2 4	2 0 8
Conversion 4½% Loan 1940-44 ..	JJ	111½	4 0 9	2 4 8
Conversion 3½% Loan 1961 or after ..	AO	107	3 5 5	3 2 1
Conversion 3% Loan 1948-53 ..	MS	104½	2 17 5	2 11 10
Conversion 2½% Loan 1944-49 ..	AO	102	2 9 0	2 4 7
Local Loans 3% Stock 1912 or after ..	JAJO	95½	3 2 10	—
Bank Stock	AO	367½	3 5 4	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	87	3 3 3	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	96	3 2 6	—
India 4½% 1950-55	MN	113	3 19 8	3 7 8
India 3½% 1931 or after	JAJO	95	3 13 8	—
India 3% 1948 or after	JAJO	84	3 11 5	—
Sudan 4½% 1939-73 Av. life 27 years	FA	119	3 15 8	3 8 3
Sudan 4% 1974 Red. in part after 1950	MN	115	3 9 7	2 15 4
Tanganyika 4% Guaranteed 1951-71	FA	115	3 9 7	2 15 3
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	111	4 1 1	2 12 6
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	109	3 13 5	3 7 6
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	103	3 12 10	3 9 3
Canada 4% 1953-58	MS	111	3 12 1	3 3 9
*Natal 3% 1929-49	JJ	100	3 0 0	3 0 0
*New South Wales 3½% 1930-50 ..	JJ	101	3 9 4	—
*New Zealand 3% 1945	AO	101	2 19 5	2 17 7
†Nigeria 4% 1963	AO	115	3 9 7	3 3 7
*Queensland 3½% 1950-70	JJ	101	3 9 4	3 8 2
South Africa 3½% 1953-73	JD	108½	3 4 6	2 17 9
*Victoria 3½% 1929-49	AO	101	3 9 4	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after ..	JJ	96	3 2 6	—
*Croydon 3% 1940-60	AO	100	3 0 0	3 0 0
Essex County 3½% 1952-72	JD	107	3 5 5	2 19 5
Leeds 3% 1927 or after	JJ	95	3 3 2	—
Liverpool 3½% Redeemable by agreement with holders or by purchase..	JAJO	108	3 4 10	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	81	3 1 9	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	95	3 3 2	—
Manchester 3% 1941 or after ..	FA	97	3 1 10	—
*Metropolitan Consd. 2½% 1920-49 ..	MJSD	99½	2 10 3	2 10 10
Metropolitan Water Board 3% "A" 1963-2003	AO	100	3 0 0	3 0 0
Do. do. 3% "B" 1934-2003 ..	MS	98	3 1 3	3 1 5
Do. do. 3% "E" 1953-73 ..	JJ	101	2 19 5	2 18 7
†Middlesex County Council 4% 1952-72	MN	115	3 9 7	2 17 6
† Do. do. 4½% 1950-70 ..	MN	116	3 17 7	3 2 11
Nottingham 3% Irredeemable ..	MN	96	3 2 6	—
Sheffield Corp. 3½% 1968	JJ	106½	3 5 9	3 3 7
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ..	JJ	115	3 9 7	—
Gt. Western Rly. 4½% Debenture ..	JJ	127½	3 10 7	—
Gt. Western Rly. 5% Debenture ..	JJ	138½	3 12 2	—
Gt. Western Rly. 5% Rent Charge ..	FA	135½	3 13 10	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	133xd	3 15 2	—
Gt. Western Rly. 5% Preference ..	MA	119½xd	4 3 8	—
Southern Rly. 4% Debenture ..	JJ	114½	3 9 10	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	113½	3 10 6	3 4 10
Southern Rly. 5% Guaranteed ..	MA	133½xd	3 14 11	—
Southern Rly. 5% Preference ..	MA	119½xd	4 3 8	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.